

Message

From: Shoven, Heather [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6F004CF5585471490D312751D125532-HSHOVEN]
Sent: 11/30/2015 2:17:10 PM
To: King, Carol [King.Carol@epa.gov]
Subject: RE: FYI: DuPont, Water Provider Reach Settlement In PFOA Case

Thanks Carol! Could you forward to the group? Have a wonderful week.

Best wishes,
Heather

Heather A. Shoven | Enforcement Team Leader | U.S. Environmental Protection Agency, Region 5
Ground Water and Drinking Water Branch | 77 W. Jackson Blvd (WG-15J) | Chicago, IL 60604 | 312-886-0153

From: King, Carol
Sent: Monday, November 30, 2015 8:16 AM
To: Shoven, Heather <shoven.heather@epa.gov>
Subject: RE: FYI: DuPont, Water Provider Reach Settlement In PFOA Case

Thanks for flagging this Heather. We should send it to the broader drinking water enforcement group as an FYI. Would you like me to forward your message or would you prefer to email the group?

I hope you had a good holiday!

From: Shoven, Heather
Sent: Monday, November 30, 2015 8:52 AM
To: Clark, Jacqueline <clark.jacqueline@epa.gov>; Poy, Thomas <poy.thomas@epa.gov>; Drake, Wendy <drake.wendy@epa.gov>; Damato, Nicholas <damato.nicholas@epa.gov>; Johnson, KarenD <Johnson.KarenD@epa.gov>; Reinhart, Roger <Reinhart.Roger@epa.gov>; Kier, Lori <Kier.Lori@epa.gov>; King, Carol <King.Carol@epa.gov>; Thurmon, Clarke <Thurmon.Clarke@epa.gov>; Harris, Kimberly <harris.kimberly@epa.gov>; Newman, Erin <newman.erin@epa.gov>; Grams, Bradley <grams.bradley@epa.gov>
Subject: FYI: DuPont, Water Provider Reach Settlement In PFOA Case

<http://insideepa.com/news-briefs/duPont-water-provider-reach-settlement-pfoa-case>

DuPont, Water Provider Reach Settlement In PFOA Case

Posted: November 25, 2015

DuPont and a public water provider in southeast Ohio have reached a settlement agreement over a lawsuit charging the company caused tort damages and pollution constituting an imminent and substantial endangerment under the Resource Conservation & Recovery Act (RCRA), coming several months after the federal district court presiding over the litigation found in a novel ruling that air deposition of pollutants constitutes disposal of solid waste.

The U.S. District Court for the Southern District of Ohio's Eastern Division issued an order Nov. 24 saying the case is now terminated by settlement and is considered dismissed without prejudice.

In the case, *The Little Hocking Water Association, Inc. v. DuPont*, Little Hocking -- a public water provider in southeast Ohio -- alleged that its wellfields were contaminated by DuPont's nearby Washington Works Facility in West Virginia, which manufactured products that involved perfluorooctanoic acid (PFOA) and other perfluorochemicals, according to the court. The water provider said DuPont's disposal practices caused imminent and substantial harm to public health and the environment and tort-related injuries.

The court last March found that RCRA waste law can be used to pursue an "imminent and substantial endangerment" suit against industry air pollution deposited on land. In the ruling, Judge Algenon Marbley found that DuPont's emissions of PFOA that landed on a rural water system's land and contaminated the soil and groundwater constitutes disposal of "solid waste" under the imminent and substantial endangerment provision. At the same time, the court said that due to differences over material facts, the parties were to go to trial in part over whether DuPont was liable for imminent and substantial endangerment to the environment.

It was considered a rare win for plaintiffs seeking to use the waste law's endangerment provision -- which allows for prosecution of violations of RCRA for waste disposal that poses a threat to human health or the environment -- to include air emissions that are deposited on land.

Few courts have taken up the issue of whether air pollution from industry that is deposited on land is waste disposal, although Marbley sought to distinguish the Little Hocking case from a 2014 U.S. Court of Appeals for the 9th Circuit decision, *Center for Community Action, et al. v. BNSF Railway, et al.*, which found that diesel emissions from locomotives at 16 California railyards were not "disposal" of solid waste subject to RCRA.

In addition, the 9th Circuit is currently reviewing a much-watched case, *Joseph Pakootas, et al. v. Teck Cominco Metals*, which is expected to decide whether air emissions leading to disposal onto land or water are actionable under the Superfund law.